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**FEB 28 2005**

**OFFICE OF PETITIONS**

In re Application of	:	
Sato, et al.	:	
Application No. 10/764,598	:	DECISION ON PETITION
Filed: 27 January, 2004	:	
Attorney Docket No. FEC 111	:	

This is a decision on the petition under 37 C.F.R. §1.53, filed on 16 November, 2004, requesting that Figs. 20 and 21 be accorded a filing date of 27 January, 2004, with the above-identified application .

The petition is **DISMISSED**.

The application was deposited on 27 January, 2004.

On 14 June, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Missing Parts" and therein indicated that Figs. 20 and 21 as described in the specification appeared to be omitted from the application. On 12 August, 2004, Petitioner replied to the Notice of Missing Parts to the extent that fees, oath/declaration and surcharge were submitted, however, there was no reference to the omitted drawings.

On 17 September, 2004, OIPE mailed a Notice of Omitted Items, again noting that Figs. 20 and 21 as described in the specification appeared to be omitted from the application as deposited. The Notice informed Petitioner that the alternatives available were to: (a) petition contending that the application was deposited with the drawings; (b) file the drawings and accept their deposit date as the filing date of the application; or (c) prosecute the application as deposited on 27 January, 2004.

On 16 November, 2004, Petitioner filed the instant petition and alleged therein that Figs. 20 and 21 as described in the specification were omitted and that Petitioner: (a) elected to prosecute on the basis of the application as filed; and (b) alleged that the omitted drawings in question were contained in foreign priority documents deposited with and incorporated by reference into the application and Petitioner would seek to have the drawings entered through a preliminary amendment, which Petitioner filed contemporaneously with the petition.

While Petitioner seeks to depend upon the incorporation by reference to bring into the application the drawings (Figs. 20 and 21) referenced from the foreign application deposited with the instant application, that is a matter for amendment—properly a preliminary amendment, which Petitioner has filed—and consideration of amendment is the province of the Examiner. This process requires no petition.

**The Examiner shall review, during the examination process, the sufficiency of the showing made as it relates to the “Preliminary Amendment” to ensure that the inclusion of Figs. 20 and 21 sought to be incorporated by reference would present no new matter.**

The petition is dismissed. No fee was charged.

**The application is being forwarded to OIPE for further processing with a filing date of 27 January, 2004, using only the application papers present on filing. It does not appear that a corrected filing receipt is required.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3214.



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Office of Petitions